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SERVICE DATE – JANUARY 11, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-556 (Sub-No. 2X)

RAILROAD VENTURES, INC.—ABANDONMENT EXEMPTION—BETWEEN
YOUNGSTOWN, OH, AND DARLINGTON, PA, IN MAHONING AND COLUMBIANA
COUNTIES, OH, AND BEAVER COUNTY, PA

Decided: January 10, 2005

In a decision served on December 13, 2004 (December 2004 Decision), the Board ruled on three separate matters pertaining to the Columbiana County Port Authority's (CCPA) purchase of a 35.7-mile rail line from Railroad Ventures, Inc. (RVI), pursuant to the offer of financial assistance provisions of 49 U.S.C. 10904 and 49 CFR 1152.27. As pertinent here, the December 2004 Decision directed that CCPA and the Central Columbiana & Pennsylvania Railway, Inc. (CCPR), the line's former operator, refund to RVI \$217,282 of the \$375,000 set-aside fund established pursuant to prior Board decisions in this case.

The December 2004 Decision is set to become effective on January 12, 2005. CCPA and CCPR (collectively referred to as CCPA/CCPR) have jointly filed a petition (and supplement) asking the Board to stay the effective date of the December 2004 Decision pending resolution of their joint petition for reopening and reconsideration, which was filed on January 3, 2005. In the petition to stay and supplement, CCPA/CCPR argue that the Board made several errors in the December 2004 Decision that will be successfully reversed upon the Board's review of the petition for reopening and reconsideration. On January 5, 2004, RVI filed replies to both the petition for stay and the supplement.

In light of the unique circumstances of this case — which involves a dispute over an arrangement designed by the Board, but not generally used in other cases — a postponement of the effective date is appropriate until the Board has had an opportunity to consider and address the petition for reopening and reconsideration. A stay would preserve the status quo until all issues have been definitively resolved, thereby avoiding the transfer of any monies that would have to be returned to CCPA should the Board decide to reduce the amount owed by CCPA/CCPR upon reconsideration.

Here, if the December 2004 Decision were to become effective on January 12, 2005, CCPA/CCPR would be required immediately to pay the full \$217,282, along with interest, to RVI. According to CCPA, it does not have funds available in this amount, and CCPR has filed for bankruptcy. Furthermore, by letter submitted on December 27, 2004, RVI has stated that, if this amount is not paid by the effective date, it will seek to enforce the December 2004 Decision in court,

including the imposition of civil penalties under 49 U.S.C. 11901(a), which could result in a penalty of \$5,000 for every day that CCPA/CCPR fail to comply. There is no point in this case in requiring CCPA (a public entity) and CCPR to pay the full \$217,282, which they state is not available, and to incur potential penalties, when the possibility exists that this amount will be reduced upon the Board's reconsideration of its earlier decision. In addition, despite RVI's claims that any money paid to it by CCPA/CCPR could be returned if the amount to be refunded is reduced, considering RVI's past conduct in this proceeding, the Board would be concerned about CCPA/CCPR's ability to easily recover this money once it is in RVI's possession.

Conversely, should CCPA/CCPR fail to have the \$217,282 amount reduced upon reconsideration, they would then be required to pay this amount to RVI, as well as any interest that has accrued up until the date of payment. Thus, if the effective date is stayed, RVI would still be made whole by CCPA/CCPR's payment of interest.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CCPA/CCPR's joint petition to stay the effective date of the December 13, 2004 decision in this proceeding pending final resolution of their joint petition for reconsideration is granted.
2. This decision is effective on its service date.

By the Board, Roger Nober, Chairman.

Vernon A. Williams
Secretary